

Steven L. Holley (*pro hac vice* pending)
(holleys@sullcrom.com)
Shane M. Palmer (SBN 308033)
(palmersh@sullcrom.com)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Brendan P. Cullen (SBN 194057)
(cullenb@sullcrom.com)
SULLIVAN & CROMWELL LLP
1870 Embarcadero Road
Palo Alto, California 94303
Telephone: (650) 461-5600
Facsimile: (650) 461-5700

Attorneys for Non-Party Spotify USA Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF SHANE M. PALMER
IN SUPPORT OF NON-PARTY SPOTIFY
USA INC.'S ADMINISTRATIVE
MOTION TO SEAL EXHIBITS DX-4491
AND DX-4641**

1 I, Shane M. Palmer, declare as follows:

2 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel
3 to non-party Spotify USA Inc. (“Spotify”). I am a member in good standing of the Bars of the
4 States of New York and California and a member of the Bar of this Court. I have personal
5 knowledge of the facts set forth in this declaration and can testify competently to those facts.

6 2. I submit this declaration pursuant to Local Rule 79-5(d) in support of
7 Spotify’s Administrative Motion to Seal Exhibits DX-4491 and DX-4641, submitted concurrently
8 herewith.

9 3. Exhibits DX-4491 and DX-4641 were produced by Spotify to Apple Inc.
10 (“Apple”) and Epic Games, Inc. (“Epic”), in response to subpoenas that Apple and Epic served on
11 Spotify in this action pursuant to Federal Rule of Civil Procedure 45 on December 2, 2020, and
12 December 8, 2020, respectively (the “Subpoenas”).

13 4. Spotify originally produced Exhibits DX-4491 and DX-4641 to Apple and
14 Epic as Excel spreadsheets. Exhibit DX-4491 was produced bearing production number
15 SPOT-EPIC-00001451. Attached hereto as Exhibit 1 to my Declaration is a copy of the document
16 produced by Spotify as SPOT-EPIC-00001451 that has been converted into PDF format for filing.
17 Exhibit DX-4641 was produced bearing production number SPOT-EPIC-00001448. Attached
18 hereto as Exhibit 2 to my Declaration is a copy of the document produced by Spotify as
19 SPOT-EPIC-00001448 that has been converted into PDF format for filing.

20 5. Prior to producing any documents to Apple and Epic in response to the
21 Subpoenas, I spoke with counsel for Apple and Epic and indicated that certain information sought
22 by the Subpoenas constitutes Spotify’s trade secrets. I explained to counsel for Apple and Epic
23 that Spotify would not produce documents containing its proprietary, competitively sensitive
24 business information except pursuant to a supplemental protective order that would ensure
25 additional protections for Spotify’s information and prohibit Apple and Epic from sharing
26 Spotify’s documents with their employees or in-house counsel.

27 6. At Spotify’s request, on February 4, 2021, Apple and Epic jointly filed a
28 Stipulated Supplemental Protective Order Governing Discovery from Spotify (“Supplemental

Protective Order”) (Dkt. No. 320). The Court entered this Supplemental Protective Order, as modified by the Court, on February 11, 2021 (Dkt. No. 334).

7. On February 24, 2021, Spotify made a production of documents to Apple and Epic in response to the Subpoenas, which included the two documents produced by Spotify as SPOT-EPIC-00001448 and SPOT-EPIC-00001451 and that Apple later identified on its Trial Exhibit List as Exhibits DX-4491 and DX-4641 (*see* Dkt. No. 481, at 141, 155). When it produced these documents to Apple and Epic, Spotify properly designated them as “SPOTIFY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” pursuant to Section C of the Supplemental Protective Order.

8. On Friday, April 23, 2021, I received an email from counsel for Apple, informing me that Exhibits DX-4491 and DX-4641 were on Apple’s exhibit list for the trial in this action, scheduled to start on May 3, 2021. In that email, Apple’s counsel proposed that Spotify file a motion in support of sealing these exhibits if Spotify wanted to maintain them under seal.

9. On Monday, April 26, 2021, I spoke with counsel for Epic and requested Epic’s consent to the relief Spotify is seeking in this Motion. On Tuesday, April 27, 2021, I received an email from Epic’s counsel confirming that Epic does not object to Spotify seeking to seal Exhibits DX-4491 and DX-4641.

10. On Monday, April 26, 2021, I also spoke with counsel for Apple and requested Apple’s consent to the relief Spotify is seeking in this Motion. On April 29, 2021, I received an email from Apple’s counsel indicating that Apple takes no position with respect to Spotify’s motion to seal at this time.

I declare under penalty of perjury that the foregoing is true and correct. Executed this April 30, 2021, at Brooklyn, New York.

/s/ Shane M. Palmer
Shane M. Palmer

ATTESTATION

I, Brendan P. Cullen, am the ECF User whose ID and password are being used to file this document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories concur with this filing.

Dated: April 30, 2021

/s/ Brendan P. Cullen

Brendan P. Cullen